

**Commissioner of Central Excise Vs. Esteem Services**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Sep-22-2006

**Reported in :** (2007)8STJ391CESTAT(Mum.)bai

**Judge :** V T M.

**Appellant :** Commissioner of Central Excise

**Respondent :** Esteem Services

**Judgement :**

1. These are department's appeals against the orders of the Commissioner (Appeals) No. PII/BKS/98/2005 dated 22-2-2005 and PII/BKS/125/2005 dated 28-2-2005 in which he has substantially modified the orders of the Dy. Commissioner, vide orders-in-original Nos.

REF/50/2004 dated 29-10-2004 and REF/55/2004 dated 30-11-2004.

3. The relevant facts relating to appeal No. E/2495/2005 are as follows: (a) The respondent company was a manufacturer of 100% cotton grey made ups and readymade garments falling under Chapter No. 63 and 62 and was availing cenvat credit of duty paid w.e.f. 1-4-2003 on the inputs, namely, cotton yarn, processed fabrics and grey fabrics.

(b) They have also procured inputs without payment of duty under the Notification No. 43/2001.

(c) During the period from July to September, 2003 the party has exported goods totally valued at Rs. 1,25,53,271/- and claimed rebate attributable to the duty paid inputs valued at Rs. 13,56,082/- used in the manufacture of exported goods.

(d) They have exported finished products during the period from July, 2003 to September, 2003 and they have claimed and received from Customs Department drawback in cash amounting to Rs. 1,16,365/- (Rs. 66,611.67 towards Central Excise account plus Rs. 49,757.33 towards Customs account.) (e) Having taken the cash drawback from the Customs department the respondent debited the amount of Rs. 66,611.67 relating to Central Excise portion of the drawback in the Cenvat credit account maintained for the purpose of paying Central Excise duty.

(f) Having debited the Central Excise portion of the drawback in the Cenvat account as above, he preferred claim for cash refund from Central Excise authorities.

(g) Thus, in addition to getting Rs. 1,16,365/- as drawback, the appellant sought cash refund of Rs. 77,428.54 from the Central Excise authorities after technically surrendering Rs. 66,611.67.

(h) The Dy. Commissioner vide his order dated 30-11-2004 rejected the refund claim on the ground that the respondent is seeking to avail double-triple benefits on the same exports. The Dy.

Commissioner has also given a finding that the respondent company has chosen to re-credit only the Central Excise portion of the drawback amount already received and not the entire amount of drawback received. The Dy. Commissioner has also held that the respondent company has given wrong declaration in the clearance documents that they were not claiming drawback from the Customs department.

(i) The Commissioner (Appeals) have taken a view that since the Central Excise portion of the drawback amount has been debited in the Cenvat account the respondent company has not claimed drawback with the customs. He has allowed the refund on this ground.

This appeal relates to refund claim of Rs. 5,27,396/- relating to the period April, 2003 to June, 2003. During this period there was a transitional provision granting credit of duty paid on inputs to the manufacturers of fabrics/garments for the period from 1-4-2003 subject to certain conditions. The facts of this case are similar to the above and in addition they have reportedly not filed the mandatory declaration on or before 15-6-2003.

5. The respondent company has not acted in a bona fide manner in claiming the export benefits. They have chosen to mis-state facts with the Central Excise authorities that they are not claiming drawback from the customs department and whereas the facts was found to be otherwise.

They have chosen to pay what is said to be Central Excise portion of the drawback amount through their Cenvat account.

6. All Industry Rates of Drawback of Duties are prescribed under the Customs and Central Excise Duties Drawback Rules, 1995 on the basis of a national average to an exporter of finished products. The raw materials might be procured from the domestic source or imported. The splitting of the drawback amount into Customs and Excise portion is for accounting purposes. This has no relevancy as far as the exporter who is availing the drawback benefit is concerned.

7. The respondent company has clearly availed a cash drawback from the Customs department. Merely by debiting Central Excise portion of the amount in the Cenvat account he has not ceased to avail the benefit of drawback. It would have been a bona fide action if they had chosen to repay the entire amount of drawback received by them to the Customs department and thereafter to seek the benefit from the Central Excise department. I have no doubt in mind that in this case the respondent company has indeed availed the drawback from the Customs department and tried to seek another benefit in a dubious manner. Perhaps, taking advantage of excess accumulated Cenvat credit they wanted to avail an additional benefit by way of cash refund from Cenvat account.

8. As an exporter and in the given facts and circumstances, the respondent company was entitled to a choice of either drawback or availment of Cenvat credit

or rebate and not a combination of all these. In the present case, the entire inputs are domestically procured and there is no evidence of use of any imported raw materials. The orders of the Commissioner (Appeals) holding that the respondent company has not claimed drawback and consequently eligible for refund from Cenvat account cannot be sustained and are set aside and the orders of the Dy. Commissioner are restored.

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